Calendar No. 647

97TH CONGRESS
2d Session

SENATE

REPORT
No. 97-455

DEVELOPMENT OF METHANE RESOURCES AT GATEWAY NATIONAL RECREATION AREA BY THE CITY OF NEW YORK

MAY 28, 1982.—Ordered to be printed
Filed under authority of the order of the Senate of May 12 (legislative day, May 11), 1982

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 2218]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2218) to provide for the development and improvement of the recreation facilities and programs of Gateway National Recreation Area through the use of funds obtained from the development of methane gas resources within the Fountain Avenue Landfill site by the city of New York, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

1. On page 1, line 5, strike out "The" and insert in lieu thereof "Notwithstanding the provisions of subsection (a) of this section, the".
2. On page 2, line 2, strike out "12" and insert in lieu thereof "50".
3. On page 2, line 4, insert the following after the period:

> The Secretary shall grant to the City, its lessee or assignee, all rights-of-way and other permits necessary from the Department of the Interior to extract and transport the gas from the site: *Provided*, That the rights-of-way and other permits shall provide for reasonable restoration of the site, including removal of any processing or storage facilities used in the disposal, development or extraction of the gas, access by the Secretary to the site for safety and other recreation area purposes, and such other reasonable conditions as the Secretary deems necessary to further purposes of the recreation area.

89-010 O

5313-26

4. On page 2, after line 7, insert the following:
Sec. 2. Subsection 4(a) of the Act of October 27, 1972 (86 Stat. 1308), is amended by changing "ten years" in the second sentence to "twenty years".

Purpose of the Measure

S. 2218, as reported, would convey the rights to methane gas emanating from the Fountain Avenue Landfill in Gateway National Recreation Area from the United States to the City of New York. S. 2218 would also extend the Advisory Commission for Gateway NRA from a 10 to a 20 year term.

Background and Need

Gateway National Recreation Area was established in 1974 by Public Law 92–592. The area has four discrete units in two States—New Jersey and New York. Gateway's lands are divided into areas of developed and traditional park use lands; that is, beaches, former city parks and relatively "wild" or undeveloped marshlands. A third category of lands includes former military bases, airfields, uncompleted construction sites and landfill areas.

New York City deeded the Fountain Avenue Landfill to the National Park Service in 1974 for inclusion in Gateway National Recreation Area. The City retained a right to use the landfill until December 31, 1985.

The 360+ acre landfill is known to be generating methane gas in amounts, that if extracted, are commercially attractive. The City of New York is currently developing a comprehensive methane recovery program in the City and would like to include the Fountain Avenue Landfill in its program. The surface area of the landfill is, in its present state, not usable for recreation as methane gas leakage and present uses preclude using the area for public access. The landfill is in the Jamaica Bay Unit of Gateway National Recreation Area. This unit has a wildlife refuge established on the island and marsh areas.

S. 2218, as introduced, would convey to the City of New York the rights to the gas subject to a payment to the United States of 12 percent of the revenue received by the City from the development of the gas. The payment to the United States would be credited to the National Park Service for use at Gateway National Recreation Area.

Legislative History

Senator D'Amato introduced S. 2218 on March 16, 1982. A hearing before the Public Lands and Reserved Water Subcommittee was held on April 14, 1982. Testimony was received from the Administration in support of S. 2218, if amended. At a business session on May 13, 1982, S. 2218 was ordered favorably reported with amendments.

Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on May 13, 1982, by a unanimous vote of a quorum present recommended that the Senate pass S. 2218 if amended, as described herein.

The rollcall vote on reporting the measure was 18 yeas and 0 nays as follows:

Yeas	Nays
McClure	
Hatfield	
Weicker *	
Domenici *	
Wallop	
Warner	
Humphrey	
Murkowski *	
Nickles	
East *	
Heinz *	
Jackson *	
Johnston	
Bumpers *	
Ford	
Matsunaga	
Melcher	
Bradley	

*Indicates voted by proxy.

Committee Amendments

Amendment No. 1 clarifies that the methane gas extraction within the Jamaica Bay unit of the area is consistent with the requirement in section 3 (a) of P.L. 92–592, that the marshes and waters of the bay are protected.

S. 2218, as introduced, provided for a payment to the United States of 12 percent of the revenue received by the City of New York. The Committee recognizes the source of the methane gas is the refuse placed in the landfill by the city and area was donated by the city to the United States. However, the Committee feels that in order to approach the equitable assessment of royalty due the United States the sharing of the revenue received by the city on a 50–50 basis could produce a return to the park approximating the normal onshore lease royalty rate of 12½% of the value of the gas produced or sold.

As reported, S. 2218 includes a provision directing that any royalty revenue received by the United States from the City of New York be credited to the appropriations of the National Park Service for the development and improvement of Gateway National Recreation Area.

The Committee wants to make it clear that revenues accruing to the park in this manner are supplemental to regular appropriations and should not be viewed as replacing regular appropriations for Gateway.

In this regard, the Committee recognizes the unique situation at Gateway concerning the need to extract the methane gas and in no way intends for royalty payments or other forms of revenue generated from mineral extraction to become a means of funding the operation of units of the National Park System.

The Committee does not intend to set a precedent in determining this specific royalty rate. The facts on the establishment of this resource, the continuing use of the site as a landfill and the return of the royalty to the park unit influenced the Committee's decision to amend the payment to the United States from 12 percent of the revenue received by the city to 50 percent of the city's revenue.

In the context of S. 2218, as reported, the term "revenues received" means: (1) monies actually received by the city of New York from sale at the wellhead of methane gas produced from the Fountain Avenue landfill; or (2) the *value* at the wellhead of any methane gas produced from the landfill, if the gas is used by the city of New York, or by any utility or other enterprise owned or operated by the city, rather than sold. The Committee intends that the city of New York pay the United States the monetary value of gas used in kind or of anything acquired by the city in exchange for the gas.

The third amendment requires the Secretary to grant any necessary rights-of-way or other permits necessary for recovery of the gas and specifies that permits will provide for reasonable restoration and other conditions as the Secretary deems appropriate. S. 2218, as reported, is meant to facilitate the city's ability to develop a gas recovery project at Fountain Avenue as simply and expeditiously as possible. The Committee recognizes that delays in extraction of the methane will result in additional loss of their resource.

The final amendment extends the Gateway National Recreation Area Advisory Commission term from 10 years to 20 years. The Commission is scheduled to expire 10 years after the 1972 Act which established the area. This amendment is identical to H.R. 5014 and S. 2275.

Cost and Budgetary Considerations

The following estimate of costs of this measure has been provided by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, D.C., May 17, 1982.

Hon. James A. McClure,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 2218, a bill to provide for the development and improvement of the recreation facilities and programs of Gateway National Recreation Area through the use of funds obtained from the development of methane gas resources within the Fountain Avenue Landfill site by the city of New York, as ordered reported by the Senate Committee on Energy and Natural Resources, May 13, 1982.

The bill would convey to the city of New York the rights to the methane gas within the Fountain Avenue Landfill, subject to a payment to the United States of 50 percent of the revenue received by the city from the development of the rights. It has been estimated that the receipts to the federal government each year would be in the range of $75,000 to $225,000.

The bill also extends the life of the Gateway National Recreation Area Advisory Commission to October 1992. Based on information provided by the National Park Service, it is estimated that the cost to the federal government to extend the Commission will be approximately $6,000 in fiscal year 1983, with small increases annually thereafter.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

JAMES BLUM
(For Alice M. Rivlin, Director).

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of the Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying-out S. 2218.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses. S. 2218, as reported, would convey the rights to methane gas emanating from the Fountain Avenue Landfill in Gateway National Recreation Area from the U.S. to the City of New York and also would extend the term of the Advisory Commission for Gateway NRA to 20 years.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any additional paperwork would result from the enactment of S. 2218.

EXECUTIVE COMMUNICATIONS

The pertinent legislative reports and communications received by the Committee from the Department of the Interior setting forth Executive agency recommendations relating to S. 2218 are set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., May 10, 1982.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Your Committee has requested the views of this Department on S. 2218, a bill to provide for greater public recreational use of the Gateway National Recreation Area and for immediate utilization of an existing energy resource which is currently being depleted from the area.

We support passage of the legislation.

S. 2218 would convey to the city of New York all rights to the methane gas resulting from solid waste decomposition on the Fountain Avenue landfill site, located within the Jamaica Bay of Gateway National Recreation Area. The conveyance made by the bill is subject to payments to the United States of 12 percent of any revenue received by the city from development of the gas; all such payments to the

United States would be credited to the appropriations of the National Park Service for the development and improvement of the recreation area.

Gateway National Recreation Area consists of approximately 26,172 acres in the States of New York and New Jersey, including uplands, heavily used beaches and marshlands. In 1981, approximately 7,381,000 recreational visits were recorded at the recreation area.

The recreation area was established by the Act of October 27, 1972 (Public Law 92–592). In March of 1974, the city of New York donated the Fountain Avenue landfill site to the United States as an addition to the recreation area. The site has been used as a landfill since about 1965 and, under the terms of the donation, the city reserved the right to continue using the site for landfill purposes through December 1985. So long as the site is used as a landfill, it is not available for public recreation development: the landfill activities and the escaping methane gas, generated by decomposition of the wastes, create a fire hazard and make the site unsuitable for public use at this time.

In order to reduce that hazard, utilize this valuable energy resource, and develop the area's recreational potential, in 1979, the city of New York requested the right to produce the methane gas at the Fountain Avenue site. Recovery of the gas was not contemplated in the instruments by which the city donated the site to the United States, and both the ownership of the methane and the authority to dispose of it are unclear. In fact, the necessary authority may not exist at all under current law. The Department of the Interior Solicitor's Office has advised us that the gas belongs to the United States. The city does not agree. Accordingly, we believe special legislation would be appropriate to accommodate the city's request. Senator D'Amato introduced S. 2218 for that purpose.

There are several aspects of the bill that should be specifically mentioned. First, it is a self-executing conveyance of rights to the methane gas, as opposed to a competitive bidding procedure. We have no objection to such a conveyance to the city in this instance, since the source of the gas is refuse from the city and the United States acquired the site from the city at no cost.

Second, the bill makes the conveyance subject to payment to the United States of 12 percent of any revenue received by the city as a result of production. While this is lower than the royalties that would normally accrue to the United States, we believe the 12 percent figure is acceptable in this instance, considering the source of the natural gas and the fact that any rights the United States has to this gas arose because of New York City's donation of this property to the National Park Service.

The third aspect of the bill that bears special mention is the provision crediting revenues received by the United States from the city to appropriations for Gateway National Recreation Area. If this provision were not in the bill, revenues would be required to be paid into miscellaneous receipts in the Treasury and would not be available for Gateway programs unless and until they were appropriated for that purpose. For fiscal year 1982, the operation and maintenance budget for Gateway is $10,343,000. Depending on the value of the gas, sub-

stantial program needs can be met at Gateway from the United States' share of the revenues from gas development.

Fourth, although estimates have been made regarding the value of this methane gas (for example, Senator D'Amato has indicated that the landfill could produce the equivalent of 400–600,000 barrels of oil annually), resource estimates of this nature are speculative, at best. However, regardless of the actual amount involved, royalties on this production will represent a significant net gain to the United States and an important offset to appropriations for the Gateway Recreation Center. We would also note that, at the present time, the Federal Government is receiving no revenues from this resource, as the gas is now being wasted into the atmosphere.

The Department would defer to the city of New York concerning its plans for contracting with a producer if the gas were conveyed to the city by this legislation. The city has advised us, however, that it would use a competitive bidding procedure and that early action on the bill is essential to obtain the most revenue, since the gas is escaping in large quantities every day.

Finally, we would suggest two amendments. At the beginning of the new subsection (i), we suggest that the phrase "notwithstanding the provisions of subsection (a) of this section" be added. This technical amendment is necessary to clarify possible inconsistencies.

We also recommend that the following be inserted before the last sentence of the new subsection (i):

The Secretary shall grant to the city, its lessee or assignee, all rights-of-way and other permits necessary from the Department of the Interior to extract and transport the gas from the site: *Provided*, That the rights-of-way and other permits shall provide for reasonable restoration of the site, including removal of any processing or storage facilities used in the disposal, development or extraction of the gas, access by the Secretary to the site for safety and other recreation area purposes, and such other reasonable conditions as the Secretary deems necessary to further the purposes of the recreation area.

This amendment requires the Secretary to grant any necessary rights-of-way or other permits necessary for recovery of the gas and specifies that the permits will provide for reasonable restoration of the site and such other conditions as the Secretary deems appropriate.

The Office of Management and Budget has advised us that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

DONALD PAUL HODEL,
Under Secretary.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 2218, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

THE ACT OF OCTOBER 27, 1972

(86 Stat. 1308)

* * * * * * *

SEC. 3. (a) The Secretary shall administer the recreation area in accordance with the provisions of the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2–4), as amended and supplemented. In the administration of the recreation area the Secretary may utilize such statutory authority available to him for the conservation and management of wildlife and natural resources as he deems appropriate to carry out the purposes of this Act: *Provided*, That the Secretary shall administer and protect the islands and waters within the Jamaica Bay Unit with the primary aim of conserving the natural resources, fish, and wildlife located therein and shall permit no development or use of this area which is incompatible with this purpose.

* * * * * * *

(i) Notwithstanding the provisions of subsection (a) of this section, the United States hereby conveys to the city of New York all rights to the methane gas and associated byproducts resulting from solid waste decomposition on the area within the Jamaica Bay Unit known as the Fountain Avenue Landfill site, subject to payments to the United States of 50 per centum of the revenue received by the city of New York, if any, from the development of such rights. The Secretary shall grant to the city, its lessee or assignee, all rights-of-way and other permits necessary from the Department of the Interior to extract and transport the gas from the site: Provided, That the rights-of-way and other permits shall provide for reasonable restoration of the site, including removal of any processing or storage facilities used in the disposal, development or extraction of the gas, access by the Secretary to the site for safety and other recreation area purposes, and such other reasonable conditions as the Secretary deems necessary to further the purposes of the recreation area. All such payments to the United States shall be credited to the appropriations of the National Park Service for the development and improvement of Gateway National Recreation Area.

* * * * * * *

SEC. 4. (a) There is hereby established a Gateway National Recreation Area Advisory Commission (hereinafter referred to as the "Commission"). Said Commission shall terminate [ten years] *twenty years* after the date of the establishment of the recreation area.

* * * * * * *

○